IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

MFA.No. 913 of 2001(C)

WCC.199/1996 of W.C.C., KANNUR
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APPELLANT OPPOSITE PARTY NO.II:

NEW INDIA ASSURANCE CO. LTD.,
SOUTH BAZAR, PAYYYANNUR,
REPRESENTED BY ITS ASST.
ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, KANDOMKULATHY
TOWERS, M.G. ROAD, KOCHI - 11.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS - APPELLANT & OPPOSITE PARTY NO.I:
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1. **K.P. ABDUL RASHEED, S/O. SULAIMAN KAKKUNNAN,**
   TRIKAPUR P.O., KASARGOD DISTRICT.

2. **G.S. ABDUL MAJEED, S/O. G.S. ABDUL RAZAK**
   ZAHARA MANZIL, P.O., TRIKARPUR,
   KASARGOD DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN
SRI.I.V.PRAMOD

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 7101 OF 2001 IN

M.F.A. NO. 913 OF 2001

CLOSED.

9.4.2007 **ID/- K. PADMANABHAN NAIR, JUDGE.**

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 913 OF 2001

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Dated this the 9th day of April, 2007

J U D G M E N T

The Insurer, who is Opposite Part No.II, in W.C.C. No.199 of 1996 on the file of the Commissioner for Workmen's Compensation Court, Kannur is the appellant. The appeal is filed against the award passed by the Workmen's Commissioner and Deputy Labour Commissioner awarding a compensation of Rs.48,424/- to the first respondent, who was the applicant. First respondent was working as a Driver of an Autorikshaw bearing Reg. No.KL-14/8897 under the second respondent. On 27.1.1995 at 10.45 a.m. the vehicle met with an accident in which the applicant sustained injuries. Applicant was aged 22 at the time of the accident. He filed the petition claiming compensation to the tune of Rs.50,000/-. The Deputy Labour Commissioner found that the applicant sustained injury during the course of employment and it is a case of employment injury and he is entitled to compensation. The Commissioner also found that the Insurer is liable to pay the amount and directed the Insurer to pay

the same. Challenging that award, this appeal is filed.

2. The applicant was examined by the Medical Board and the Board found that the applicant sustained a permanent hearing disability of 10%. The Deputy Labour Commissioner took a view that since the applicant was working as a Driver, the 10% disability of hearing is more than enough to discontinue his job. It was further found that occupational disability was not assessed. The Deputy Labour Commissioner fixed the permanent disability at 25% and awarded compensation.

3. There is no evidence to show that the applicant became completely deaf. Even according to the applicant his hearing capacity was not completely affected. Medical evidence also shows that there is no loss of total disability. But the case of the applicant is that since hearing capacity is affected he is not continuing the job.

4. Even though the Commissioner has no jurisdiction to enhance the permanent disability from 10% to 25%, considering the entire aspects of the case, the earning capacity of the applicant will be affected at least by 15% on account of the disability of the hearing capacity. So the earning capacity can be

taken as 15% and compensation has to be recalculated. The Deputy Labour Commissioner awarded interest at the rate of 12% per annum on the compensation awarded, which is against the statutory provisions. Only 6% interest can be awarded. So the amount due to the applicant is calculated as follows:

$$\text{"}\frac{1000 \times 50 \times 15 \times 221.37}{100 \times 100} = 16602.75\text{"}$$

The Compensation due to the applicant is fixed as Rs.16,602.75 with 6% interest from the date of filing of the application till date of payment. The appellant is directed to deposit the above amount. If any excess deposit is made, the same shall be refunded to the appellant.

Appeal is disposed of as above.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 913 OF 2001

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J U D G M E N T

9TH APRIL, 2007